

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 108 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

SHAMJIBHAI AKHABHAI

Versus

GSRTC

Appearance:

MR HK RATHOD for Petitioner

Mr.Pranav G. Desai for respondent

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 04/07/97

ORAL JUDGEMENT

1. The petitioner plaintiff who has been working as conductor in the Gujarat State Road Transport Corporation, respondent herein, was dismissed from service for alleged misconduct after following the procedure prescribed by law. The petitioner plaintiff thereupon instituted a Regular Civil Suit No. 856 of 1991 in the court of Civil Judge at Rajkot whereby the relief for ad interim injunction was not granted by order

passed below Exhibit 5 on 15th October, 1991.

2. Being aggrieved by the said judgment and order, the petitioner filed Misc. Civil Appeal No. 169 of 1991 before the Second Jt. District Judge at Rajkot, who by a very lengthy judgment after considering all aspects of the matter, dismissed the appeal and confirmed the order of the Jt. Civil Judge, Senior Division, Rajkot by order dated 7th of January, 1992.

3. Being aggrieved thereby, the present Civil Revision Application is filed by the petitioner plaintiff.

4. At the admission stage, the learned Single Judge of this court while issuing rule nisi granted the relief of maintenance of status quo and Mr. H.K. Rathod, learned counsel for the petitioner states that the petitioner continues in service as conductor as on date at Surendranagar City Depot. Having heard Mr. Rathod for the petitioner and Mr. Pranab G. Desai for the respondent, this court has no manner of doubt that neither the suit nor the appeal before the lower appellate court was maintainable as in substance the relief of specific performance of an agreement of service was sought from the Civil Court which under the provisions of the Specific Relief Act, 1963, cannot be granted. Secondly, for a conductor, who has been dismissed from service for a misconduct after holding departmental enquiry, remedy is already provided by in the Industrial Disputes Act, 1947 and on seeking a reference of dispute after failure of conciliation, petitioner would have well moved the court which has the jurisdiction. Unfortunately, the petitioner has thought it fit not to go to the forum available to him in law and has either deliberately or non-deliberately chosen a wrong forum and has continued in service over a period of six years and unfortunately this Hon'ble High Court has been party to such prolongation of absolutely unmaintainable proceedings. Much could be said about the exercise of power by this court, but the judicial propriety requires me to observe silence and simply to dismiss this Civil Revision Application with direction to the respondent Corporation not to terminate the services of the petitioner for a period of two months so as to enable the petitioner to have resort to proceedings available to him under the Industrial Disputes Act, 1947.

4. In the result, the Civil Revision Application fails. Rule is discharged subject to the aforesaid modification. There shall be no order as to costs.

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